

201225022



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

MAR 27 2012

Uniform Issue List: 408.03-00

T:EP:RA:T3

Legend

Taxpayer A:

IRA X:

Financial Institution A:

Financial Institution B

Date 1:

Date 2:

Amount M:

Dear :

This is in response to your request dated January 25, 2011, as supplemented by correspondence dated July 27, 2011 and March 15, 2012, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (Code).

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A maintained an Individual Retirement Account (IRA), IRA X, with Financial Institution A. Taxpayer A, age asserts that, on Date 1, Taxpayer A received a distribution of Amount M. Taxpayer A asserts that his failure to accomplish a rollover of Amount M within the 60-day period prescribed by section 408(d)(3) of the Code was due to Financial Institution B's error in failing to follow Taxpayer A's instructions.

Taxpayer A represents that he maintains IRA X at Financial Institution A. On Date 1, he took a distribution of Amount M from IRA X which he intended to roll over to an IRA within the statutorily required 60-day period. Amount M was electronically transferred from IRA X to his Financial Institution A individual account and then to an individual account with Financial Institution B.

On Date 2, Taxpayer A contacted Financial Institution B and requested that Amount M be transferred from his business account to his personal account and then transferred to IRA X with Financial institution A. However, Financial Institution B only transferred Amount M from the business account to the personal account. Financial Institution B failed to complete the final step of the transaction because of a lack of electronic link between the relevant accounts and failed to inform Taxpayer A of the problem.

Taxpayer A first learned at a year-end review that the Date 1 IRA X transfer was taxable. Taxpayer A contacted Financial Institution A and was informed that because the 60-day period had expired nothing could be done to correct the error.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement, with respect to the distribution of Amount M contained in section 408(d)(3) of the Code.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if--

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the

amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under section 408(d)(3)(A) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I).

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation you submitted is consistent with your assertion that your failure to accomplish a timely rollover was caused by an error committed by Financial Institution B in failing to follow your instructions to transfer Amount M back to IRA X.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount M from IRA X. You are granted a period of 60 days from the issuance of this letter ruling to contribute Amount M into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount M will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto. This letter expresses no opinion as to whether IRA X satisfied the requirements of section 408 of the Code.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you have any questions, please contact (I.D.#) by
phone at or fax at

Sincerely yours,



Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose